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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/798,612	03/11/2004	Anthony J. Gounalis	LM(F)6726	6193
26294	7590	02/15/2006		
TAROLLI, SUNDHEIM, COVELL & TUMMINO L.L.P. 1300 EAST NINTH STREET, SUITE 1700 CLEVEVLAND, OH 44114			EXAMINER BARKER, MATTHEW M	
			ART UNIT	PAPER NUMBER
			3662	

DATE MAILED: 02/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/798,612	Applicant(s) GOUNALIS, ANTHONY J.	
	Examiner Matthew M. Barker	Art Unit 3662	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-10 is/are allowed.
- 6) ☒ Claim(s) 11-19 is/are rejected.
- 7) ☒ Claim(s) 20 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed on 1/10/2006 have been fully considered but they are not persuasive.
2. In response to applicant's arguments regarding claims 11 and 16 that it would not have been obvious for one of ordinary skill in the art to modify the background with Farrow, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).
3. In response to applicant's argument regarding claims 11 and 16 that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 11-15 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Chapter 2106, section IV. B. 1. (a). of the MPEP states:

“Since a computer program is merely a set of instructions capable of being executed by a computer, the computer program itself is not a process and Office personnel should treat a claim for a computer program, without the computer-readable medium needed to realize the computer program’s functionality, as nonstatutory functional descriptive material. When a computer program is claimed in a process where the computer is executing the computer program’s instructions, Office personnel should treat the claim as a process claim. See paragraph IV.B.2(b), below. When a computer program is recited in conjunction with a physical structure, such as a computer memory, Office personnel should treat the claim as a product claim.”

A computer program in itself without a computer-readable medium is non-statutory.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11 and 13-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted prior art disclosed in the specification in view of Farrow.

Regarding claim 11, the prior art admitted in the specification discloses a system including: receiving electromagnetic signals (page 1, lines 14-15), chronologically segregating the electromagnetic signals into a plurality of dwells (page 1, lines 14-15), controlling the processing of the dwells (page 1 lines 16-17 – page 2 lines 1-6), and determining an analysis dwell (page 2, lines 7-14). The admitted art does not disclose computing a coarse attenuation. Farrow discloses a system (Figure 1) that determines a coarse attenuation (See abstract, lines 1-14). It would have been obvious to modify the admitted prior art with the teaching of Farrow to include a coarse attenuation for the analysis dwell in order to help prevent the detection of too much signal. (See Farrow column 1, lines 19-24, and the background of the present application: page 3, lines 2-5.) Furthermore, it would be obvious to use a computer program to perform the claimed instructions.

Regarding claims 13-15, Farrow discloses a threshold detector for determining whether a fine attenuation is greater than an attenuation threshold (Farrow claim 4), a means for setting a fine attenuation to a predetermined attenuation value (Farrow claim 4), and for setting to zero (column 4, lines 9-12). It would have been obvious to modify the admitted prior art with the teaching of Farrow to include a fine attenuation along with the claimed determination and attenuation setting steps in order to attain an ideal

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attenuation. Furthermore, it would be obvious to use a computer program to perform the claimed instructions.

Regarding claim 16, the prior art admitted in the specification discloses a system including: receiving electromagnetic signals (page 1, lines 14-15), chronologically segregating the electromagnetic signals into a plurality of dwells (page 1, lines 14-15), controlling the processing of the dwells (page 1 lines 16-17 – page 2 lines 1-6), and determining an analysis dwell (page 2, lines 7-14). Farrow discloses steps of determining an update attenuation of the analysis dwell (column 2, lines 53-58), determining whether a new analysis dwell is required (Figure 7, step 703), and computing a coarse attenuation (See abstract, lines 1-14). It would have been obvious to modify the admitted prior art with the teaching of Farrow in order to help attain an ideal attenuation for each incoming signal. (See Farrow column 1, lines 19-24, and the background of the present application: page 3, lines 2-5.)

Regarding claim 17, the admitted prior art discloses a step of executing the analysis dwell (page 2, lines 12-14).

Regarding claim 18, determining the difference between a measured signal amplitude and a predetermined signal level by subtraction would have been the obvious method for computing a coarse attenuation.

Regarding claim 19, the admitted prior art discloses a step of determining whether a dwell is an analysis dwell (page 2, lines 7-14).

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Allowable Subject Matter

7. Claims 1-10 are allowed.
8. Claim 20 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.


9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew M. Barker whose telephone number is (571)272-3103. The examiner can normally be reached on M-F, 8:30 AM-5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Tarcza can be reached on (571)272-6979. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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